

MINUTES



REGULAR MEETING OF THE PLANNING COMMISSION, CITY OF HAYWARD

Council Chambers

Thursday, April 10, 2003, 7:30 P.M.

777 "B" Street, Hayward, CA 94541

MEETING

The regular meeting of the Hayward Planning Commission was called to order at 7:30 p.m. by Chairperson Bogue, followed by the Pledge of Allegiance.

ROLL CALL

Present: COMMISSIONERS Zermeno, McKillop, Sacks, Caveglia, Halliday
CHAIRPERSON Bogue
Absent: COMMISSIONER Thnay

Staff Members Present: Anderly, Conneely, Emura, Looney, Patenaude

General Public Present: Approximately 20

PUBLIC COMMENT

AGENDA

1. Variance No. PL-2003-0102 – Page Bennett (Applicant/Owner) – Request to Allow a 7-Foot Fence Along the Side and Rear Property Lines – The Property is Located at 313 Bridgecreek Way
2. Administrative Use Permit No. PL-2003-0030 – Institute of Divine Metaphysical Research/Alex Bailey (Applicant) / Loube, et. al. (Owner) – Request to Continue Operating a Religious Facility in the Vermont Plaza Shopping Center – The Property is Located at 22636 Vermont Street
3. Site Plan Review Application No. 2003-0125 – Standard Pacific Homes (Applicant) / Acacia Credit Fund 7, LLC (Owner) - Request for Approval of the Design of 27 Single-Story Single-Family Dwellings, including a Request for a Variance of Rear Yards and Lot Coverage – The Property is Located at 28905 Hesperian Boulevard in Phases I and II of Eden Shores (Commonly Known as Oliver West)
4. Text Change Application PL-2003-0175 – Initiated by the Planning Director – Request for an Amendment to the Zoning Ordinance Relative to Expiration of Discretionary Permits and Miscellaneous Clarifications and Corrections, Including Definition of a Garage, Bedroom, Home Occupation, Household Pets and Livestock

PUBLIC HEARINGS

1. Variance No. PL-2003-0102 – Page Bennett (Applicant/Owner) – Request to Allow a 7-Foot Fence Along the Side and Rear Property Lines – The Property is Located at 313

Bridgecreek Way

Associate Planner Emura made the staff report. He indicated that the property was located within the Twin Bridges residential development. The applicant has a dog fancier permit and keeps up to 4-8 dogs on her property. She fosters these dogs. He noted that staff cannot support the variance because there are no special circumstances to allow for it. He emphasized that the issue is the variance for a 7-foot fence and not her permit to keep dogs on the property. He commented that staff received seven emails supporting her efforts as well as the fence and four emails from neighbors not supporting the dogs and fence.

Commissioner Zermeño asked about the CC&R's for the property and why the violation is not internal.

Associate Planner Emura said this is in response to City staff noting the violation through Community Preservation as a result of an anonymous call.

Commissioner Caveglia asked about the artificial barrier described by Mr. Emura. The fence was in response to her need for fostering dogs.

Associate Planner Emura described a horizontal barrier to contain the dogs in lieu of a 7-foot fence.

Planning Manager Anderly added that the South of 92 project is using similar barriers for keeping domestic animals and pets out of the wildlife habitat.

Commissioner Halliday commented that the Homeowners Board was divided on the issue and noted that a 7-foot fence would violate the City Zoning Ordinance.

Commissioner McKillop asked about latticework above a 6-foot fence and whether or not this would be legal or illegal.

The public hearing opened at 7:42 p.m.

Paige Bennett, applicant, said she erected the fence because a neighbor was concerned about the dogs leaping the fence. She described her present situation as creating a safe environment for animals and people. After bringing the issue to the Home Owners Association, they elected an architectural board to review the fencing issue. The issue has come up with other residents as well. She noted the original fence on the property is only 5-feet 10-inches. She added that the zoning ordinance should be changed to meet the needs of the community since many people in the community are already in violation of the ordinance. Others have erected higher fences on their property for both security and privacy.

Commissioner Caveglia asked about a letter contained in the staff report saying neighbors are afraid of vicious dogs jumping over the fence.

Ms. Bennett described most of her dogs as over 4 months of age. She added that there had been two activities reported to animal control regarding her property. One was in March of



2001, some people were afraid of the dogs on her property, and the second in November 2001, when there was a dog fight.

Commissioner Caveglia then asked about staff's proposal of a horizontal barrier.

Ms. Bennett agreed that it might be possible. She then emphasized that the fence was erected at neighbor's request. She stated that it is not an issue with the fencing but animals.

Commissioner Caveglia agreed that apparently other people in the neighborhood have the same issue. He agreed that it is a legitimate concern with privacy; the way houses are being clustered together so closely. He suggested they might look at changing the Ordinance.

Commissioner McKillop asked whether it was the neighbors to the back who objected.

Ms. Bennett said one does not, and the other one requested it. She said it also works as a sound barrier since the animals get set off with the noise created by the children in the neighborhood. She added that she does not want any of them to worry about the animals.

Commissioner Halliday said when she was asked to put in the fence, did she realize the CC&R's did not approve the fence.

Ms. Bennett stated that the Home Owner's Association was all but non-existent at that point. She added that over two-dozen homes in the area have fence extensions. In late March of this year, the architectural board was appointed to discuss changes in the architectural guidelines. Since that was done so recently, they have not actually done any work at this point.

Commissioner Halliday asked whether she would be willing to take the fence down to 6-feet, or perhaps there might be other solutions.

Ms. Bennett said she did not think the animals could make it over the fence.

Dr. Kim Burcovitz, the veterinarian who sees the dogs, said the issue seems to be the dogs. She said none is really vicious nor have they had to be muzzled any of these dogs. Ms. Bennett is training them to be family dogs. She noted the fostering care they are given.

Vanessa Beck commented that the real issue seems to be Ms. Bennett's fostering of dogs. She added that she, too, had seen other fences in the neighborhood and reminded everyone that this was an anonymous complaint. She added that Ms. Bennett keeps a model foster home, noting that the 7-foot fence is an extra foot of security. She asked the Commission to consider leaving it.

Kim Schaefer, President of the Fremont Animal shelter, talked about Ms. Bennett. She described her as a responsible pet owner. She noted that the fence is necessary. She noted that

Ms. Bennett would not have the care of aggressive dogs.

Gerry Gallagher said he was a 40-year resident of Hayward and a member of Friends of Fairmont Animal Shelter. He said that it is a small shelter mainly to serve the unincorporated areas. He noted that there are three options for animals that are brought to the shelter: adoption, foster home, or euthanasia. Ms. Bennett performs a great service by fostering the dogs, which are brought into the shelter.

Commissioner Halliday said the issue has come up before and other circumstances. She noted that this is a citywide ordinance. She asked Mr. Gallagher whether he was a foster caregiver as well.

Mr. Gallagher said he was, and has a 6-foot fence because he fosters cats.

Steve Sapontzis, president of Hayward Friends of Animals, said findings could be made to allow the fence or special circumstances. He added that this is not a special privilege since Ms. Bennett is not doing this for personal interests, or private needs. It seems the special circumstances are that she is a volunteer to foster dogs. He commented that these are Pit bulls and noted that she makes sure they are safe dogs. She put up the fence for the psychological concern of the neighbors. These all could be construed as special circumstances.

Kathy Harris, one of the Fairmont volunteers, stated that the fence for the neighbors. Ms. Bennett is a responsible person. She noted that it is only a one-foot extension for the fence. It is also privacy for neighbors.

Jeanne Gocker, Friends of Hayward Animals, discussed spaying and neutering pit bulls. She said this is the number one animal put down in the City of Hayward. She noted that people are afraid of them for no reason. The Friends has received a donation to help spay or neuter 100 pit bulls. Dr. Hackler on Grove Way in Castro Valley. She noted how exceptional Ms. Bennett is. She looks for the safety of people in the community. She does all the work. If one of the animals is not suited to domestication, she will not keep it. Ms. Cocker said she would hope the Commission would grant the variance to serve the community.

Justine Slusarski - Explained that there are various reasons to have higher fences. She commented that anonymous is trying to make an example of Ms. Bennett. She said she is a neighbor two doors away. The fences help neighbors to feel more secure. The area is riddled with crime, particularly the constant mail theft. She said there are numerous strange cars parked in Twin Bridges. She noted that perhaps if everyone had 7-foot fences maybe the criminals would not feel so confident. She noted that the quality of material used by the builder on the fences was the lowest grade. She added that the quality of this fence is very good. It would be a mistake to take this fence down. The quality of the standard fencing is substandard and is a threat to small children and animals.

Linda Bristow, another animal lover, said it was not a special privilege for Ms. Bennett, it is merely the ability to grant her the tools for the great job she is doing. She added that it should be the position of the Commission to act for what is good for the community and good for quality of life. She added that she does know that variances are given.



Susan Perry, volunteer for Friends of Fairmont, said that it would not be fair to ask Ms. Bennett to make a change since she was attempting to be a good neighbor. It would also be expensive. She asked the Commission to allow the variance since Ms. Bennett is providing a service to the community. She noted that there would be a problem with staff's suggestion of the extension and a ditch since the yard is such a narrow space. This kind of solution would be intrusive, not reasonable or practical. This fence is probably an up-grade.

Carol Fox, a neighbor who lives two-doors away, said Ms. Bennett is a responsible person, who came under attack because of the dogs. She described them as abandoned throwaway animals. As a concerned and thoughtful resident, she chose to build the fence and was thinking of the safety of the animals and residents. She noted that Ms. Bennett voluntarily and carefully attends to these animals. Other fences in the neighborhood also violate the rules. She commented that there is greater privacy from having the higher fence. She said she was considering a lattice on the top of her own fence.

Another neighbor said she has no special interest in this issue. However, with the standard 6-foot fence and her 2-year old child, he could launch any toy over the fence. Ms. Bennett's fence is safe; she encouraged a variance for all of Hayward for greater privacy.

Kathy Watkins noted that if you don't grant her a variance, everyone else would have to take down their higher fences as well.

The public hearing was closed at 8:27 p.m.

Commissioner Caveglia moved, seconded by Commissioner Zermeño, to approve the variance on its own benefit. He said he would argue special circumstances do exist. She has a dog fancier permit. He said it would be contradictory if we don't allow it since this is within the nature of what she is doing. Beyond that he commented that the whole ordinance should be brought forward. He noted that since they are permitting smaller footprints for the size of homes, the need for privacy is there. He said the Commissioner should grant her the variance and change the ordinance.

Commissioner Sacks said she disagreed with the motion. She mentioned that she lives in a neighborhood that has no fences. She noted that the City of Hayward has zoning, rules, etc. One of them says 6-foot fences at the highest. Twin Bridges was built to comply with that rule. She added that it was not clear that those neighbors who requested her to build a 7-foot fence even knew the rule was 6-foot. The other issue is that although the applicant has a dog fancier's license or permit, it was issued when there was a 6-foot fence. She stated that nothing convinces her to throw out the rule. Even looking at a broader context, she said she does not see that it should be granted but should be denied.

Commissioner Halliday asked about the historical background of the 6-foot rule.

Planning Manager Anderly stated that anything approved above a 6-foot fence needs a building permit. The 6-foot rule allows light and sunshine. She commented that a responsible fence builder would inform them of the requirement for a building permit.

Commissioner Halliday stated it is a really hard decision to make. On the one hand, she said, her heart is with the dogs and people who came here. However, the Commission would be granting this variance in violation of the CC&R's, City ordinances and the developer. She did think that use of the property would stand as a finding of approval. She then proposed a substitute motion. Allow the variance for a 1-year period and discuss it at that time as to whether it should be in force. She emphasized that it is important for the community to talk about this, and since they have just formed an architectural review board to discuss it, this would give them time to review the applicant's situation. Maybe they will come together and want to change the rule. She suggested reviewing the over-all rules in newer neighborhoods. With the bigger and higher houses, 7-foot fences do not look so bad. The motion died for lack of a second.

Assistant City Attorney Conneely stated that fostering dogs is not a special circumstance in land use issues.

Commissioner McKillop said she did not have a problem with 6-foot fence ordinance but maybe should be revisited. She did note that the 7-foot fence was built to accommodate her neighbors.

Commissioner Zermeño said so many dogs might not belong in an urban suburban setting. However, Ms. Bennett was just protecting the neighborhood. He said he liked the one-year trial to sort out the solution to the 6-fence but did not realize a substitute motion needed a second. He then re-made the substitute motion allowing a 7' fence for a one-year trial. Commissioner Halliday seconded it.

Commissioner Caveglia said he would like to thank Ms. Bennett for her work fostering dogs. He said it is the ordinance caused the problem. There are special circumstances. He added he did not like the one-year trial since it keeps everything hanging. He added that one way to judge society is how well it treats its animals.

Commissioner Halliday asked for a clarification if there was not a majority vote.

Assistant City Attorney Conneely responded that if no motion is approved, the variance would be denied and the appellant could appeal to the City Council. Or, the issue could be held over to a future meeting. However, she added that Commissioner Thnay might be precluded from voting since it is his neighborhood.

Commissioner McKillop suggested both the City and the Homeowners Association could talk about the fence issue without tying to this applicant. It does not seem fair to hang her up for a year.

Chairperson Bogue commented that his major concern is that the City of Hayward ordinances



require a maximum of 6-feet. When the CC&R's were created they were based on this expectation. This variance is a violation of that. He added that he would have a hard time supporting this motion. He added that he was concerned with keeping it around for one-year with the hope that someone might change the requirement. He said with the extension of time, perhaps the rule might be changed.

Commissioner Zermeno suggested that Ms. Bennett, appeal to the Home Owners Association and convince them the 7' fence is appropriate. He noted that it is not that big a deal. However, he added that perhaps the permit for this many dogs should not have been issued. Rather than penalizing the applicant, the one-year allowance would offer them the opportunity to resolve the issue.

Commissioner Caveglia suggested that one of the purposes of the Planning Commission is to grant variances. He commented that clearly this fence is not an eyesore. It is a social problem, the pit bull thing. Hayward society has brought these animals here. When they are abandoned or abused, somebody has to pick those pieces up. Again, he thanked Ms. Bennett for her work in this area.

Commissioner Sacks said she did not agree with the premise that there was an underlying assumption that there will be a change in the City of Hayward ordinances. This is not a healthy situation.

The Substitute Motion failed by the following vote:

The motion failed by the following vote:

AYES:	COMMISSIONERS Halliday, Zermeno
NOES:	COMMISSIONERS McKillop, Caveglia, Sacks
	CHAIRPERSON Bogue
ABSENT:	Thnay
ABSTAIN:	None

Discussion then reverted back to the original motion.

Chairperson Bogue said the use on the property could not be considered special circumstances.

Commissioner Halliday emphasized that they still had a decision to make. She then assumed the original complainant would bring it back to the City Council on appeal. She said she felt that communities needed to come together and talk about these things. She added that she would vote for the motion.

Chairperson Bogue said he would vote against the motion for legal reasons. This fence is illegal and there were not grounds for another variance. He emphasized, either change them all

or find a reason not to.

Commissioner Zermeño said he could not support so many dogs but since the animal control seemed satisfied and there is sufficient support for serving a community and neighborhood need, he would support the motion.

Commissioner McKillop noted that this is not a pleasant and easy process. The City and the neighborhoods need to talk about and look at this ordinance.

The motion passed by the following vote:

AYES:	COMMISSIONERS	Halliday, Zermeño, Caveglia,
		McKillop,
NOES:	COMMISSIONER	Sacks
	CHAIRPERSON	Bogue
ABSENT:	Thnay	
ABSTAIN:	None	

2. Administrative Use Permit No. PL-2003-0030 – Institute of Divine Metaphysical Research/Alex Bailey (Applicant) / Loube, et. al. (Owner) – Request to Continue Operating a Religious Facility in the Vermont Plaza Shopping Center – The Property is Located at 22636 Vermont Street

Assistant Planner Emura described the request to continue the permit for religious facility. He noted that there are two vacant commercial properties at the site; one will be a dollar store. Since it seems difficult to find tenants for this location, staff is supporting the continued use of the religious facility. He noted that he had received one public comment in support and one against the request.

The public hearing opened at 9:00 p.m.

Alex Bailey, applicant, said three years ago they were given permission for the space. He noted that they hold classes 3 times a week, usually in the evenings. Their programs vary with one the Bay Area Cable Science Exposition coming up. He said the landlord is willing to continue their lease, for which they have a letter of intent but no lease. That will be contingent on what the Commission decides. He said the Hayward Police Department knows them and with them have held neighborhood watch meetings. He added that it is time-consuming and expensive to negotiate the lease without information on their status.

John Harris, a member, said he lives on Kelly Hill so he passes by the Plaza everyday. That store was vacant for 3-years. He commented on the improvements the membership had made to the building. They built two bathrooms, painted and did a number of things inside. He added that they would lose that investment. People stop by to ask for information. Since cars are there and lights are on in the evenings, it has become a positive influence in the neighborhood. He added that it makes a big difference having the presence of people of good behavior, and would like an extension.



The public hearing closed at 9:05 p.m.

Commissioner Halliday moved, seconded by Commissioner McKillop to approve the application for a continued Administrative Use Permit for the Plaza. The motion passed unanimously with Commissioner Thnay absent.

3. Site Plan Review Application No. 2003-0125 – Standard Pacific Homes (Applicant) / Acacia Credit Fund 7, LLC (Owner) - Request for Approval of the Design of 27 Single-Story Single-Family Dwellings, including a Request for a Variance of Rear Yards and Lot Coverage – The Property is Located at 28905 Hesperian Boulevard in Phases I and II of Eden Shores (Commonly Known as Oliver West)

Principal Planner Patenaude reminded commissioners of their previous approvals. He discussed the single-story models, which were mostly lined in two rows along the sound wall since it was difficult for the two-story models to meet the qualifications. The presentation at this meeting was for the design and placement of the homes on the lots. He made several corrections to the staff report, particularly to the numbers of floor plans available. He described the reason for the needs for variances adding that staff recommended approval.

Commissioner Halliday said she was curious as to why there were no pictures of streetscape for single-story between two story homes.

Principal Planner Patenaude said staff originally wanted that type of mix, but the railroad issue required most of the placement along the sound wall. In "The Cape" there is a one-story home next to the park.

Commissioner Caveglia said he thought the City discouraged streetscapes with nothing but garage doors.

Principal Planner Patenaude stated that 50-percent of the frontage can be used for a garage.

Commissioner Caveglia then asked for different sightings.

Principal Planner Patenaude said he was not sure how you would avoid that on this project.

Commissioner Caveglia then stated that he wanted it on record as saying he would like to discuss 7-foot fences.

The public hearing opened at 9:17 p.m.

Peter Dunn, Standard Pacific, Campbell branch, discussed the pre-cast concrete walls used in the project as part of the fencing and privacy concerns.

Commissioner Halliday said she visited the site and the project is coming along out there. She then echoed the previous concern regarding fences and hoped the developer would pay attention. She commented that this property is close to the Bay and the wind is quite strong out there, with the salt air and salt breezes, the developer should pay attention to the quality of the fences. She noted that she had seen a good number of people who were interested in the project.

Commissioner Sacks said she had also been out there and was also surprised at the number of people.

The public hearing closed at 9:21 p.m.

Commissioner Sacks moved, seconded by Commissioner Zermeño, for approval as recommended.

The motion passed by the following vote:

AYES:	COMMISSIONERS Halliday, Zermeño, McKillop, Sacks
	CHAIRPERSON Bogue
NOES:	COMMISSIONER
ABSENT:	Thnay
ABSTAIN:	Caveglia

4. Text Change Application PL-2003-0175 – Initiated by the Planning Director – Request for an Amendment to the Zoning Ordinance Relative to Expiration of Discretionary Permits and Miscellaneous Clarifications and Corrections, Including Definition of a Garage, Bedroom, Home Occupation, Household Pets and Livestock

Planning Manager Anderly noted that this is a clean up of text only in the Zoning Regulations. She added that the intent of the amendments is to clarify the expiration date of discretionary permits. She then went through the various ordinances and minor corrections.

Commissioner Caveglia clarified several issues.

Commissioner Sacks asked about the definitions of a bedroom or sleeping room and why sleeping or living in a vehicle would be allowed only in a Mobile Home Park.

Chairperson Bogue asked about the definition of sleeping and bedrooms. He commented that the Standard Pacific Plan they had just approved, had sleeping rooms with no windows, which under this definition would be illegal.

Planning Manager Anderly read the definition and said it was the building code definition.

The public hearing was opened and closed at 9:50 p.m.

Commissioner Caveglia moved, seconded by Commissioner Zermeño, to recommend approval



of the text changes with the inclusion of the two suggested clarifications made by Commissioner Sacks and Chairperson Bogue.

The motion passed unanimously, with Commissioner Thnay absent.

ADDITIONAL MATTERS

5. Oral Report on Planning and Zoning Matters

Planning Manager Anderly announced two work sessions in May, on the 8th, with a public hearing and dinner, and on the 29th, without either. Commissioner Sacks said she would be out of town on the 29th and not available for the work session.

6. Commissioners' Announcements, Referrals

Commissioner Zermeno asked for a Community Preservation visit to the home on the corner of Sleepy Hollow and Hesperian. He said the reason would be self-evident.

Commissioner Halliday asked about the scheduling for the spring field trip. She was told there was no information at this point. She then asked about the inclusionary ordinance and consideration regarding older neighborhoods.

Planning Manager Anderly announced that the inclusionary ordinance would be on the next City Council work session. She said she would make sure that each member received the staff report. As to the request to pursue development standards in older neighborhoods, nothing has been scheduled at this point.

APPROVAL OF MINUTES

Both sets of minutes were held over since several Commissioners had made changes and others did not have the opportunity to see them.

- March 13, 2003
- March 27, 2003

ADJOURNMENT

The meeting was adjourned by Chairperson Bogue at 9:58 p.m.

APPROVED:

Barbara Sacks, Secretary
Planning Commission

ATTEST:

Edith Looney
Commission Secretary